



[Billing code: 6750-01-S]

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (“OMB”) to extend through November 30, 2016, the current Paperwork Reduction Act (“PRA”) clearance for the FTC’s enforcement of the information collection requirements in its Prescreen Opt-Out Notice Rule (“Prescreen Opt-Out Rule” or “FTC Rule”), which applies to certain motor vehicle dealers, and its shared enforcement with the Consumer Financial Protection Bureau (“CFPB”) of the provisions (subpart F) of the CFPB’s Regulation V regarding other entities (“CFPB Rule”). That clearance expires on November 30, 2013.

DATES: Comments must be filed by [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form by following the instructions in the Request for Comment part of the

SUPPLEMENTARY INFORMATION section below. Comments in electronic form should be submitted by using the following weblink:

<https://public.commentworks.com/ftc/prescreenoptoutpra> (and following the instructions on the web-based form). Comments filed in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580, in the manner detailed in the SUPPLEMENTARY INFORMATION section below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Karen Jagielski, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, NJ-8100, Washington, DC 20580, (202) 326-2509.

SUPPLEMENTARY INFORMATION:

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).¹ The Dodd-Frank Act substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred to the CFPB most of the FTC’s rulemaking authority for the prescreen opt-out provisions of the Fair Credit Reporting Act (“FCRA”),² on July 21, 2011.³ For certain other portions of the FCRA, the FTC retains its full rulemaking authority.⁴

The FTC retains rulemaking authority for its Prescreen Opt-Out Rule, 16 CFR 642, solely for motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.⁵

¹ Pub. L. 111-203, 124 Stat. 1376 (2010).

² 15 U.S.C. 1681 *et seq.*

³ Dodd-Frank Act, at section 1061. This date was the “designated transfer date” established by the Treasury Department under the Dodd-Frank Act. *See* Dep’t of the Treasury, *Bureau of Consumer Financial Protection; Designated Transfer Date*, 75 FR 57252, 57253 (Sept. 20, 2010); *see also* Dodd-Frank Act, at section 1062.

⁴ The Dodd-Frank Act does not transfer to the CFPB rulemaking authority for FCRA sections 615(e) (“Red Flag Guidelines and Regulations Required”) and 628 (“Disposal of Records”). *See* 15 U.S.C. 1681s(e); Public Law 111-203, section 1088(a)(10)(E). Accordingly, the Commission retains full rulemaking authority for its “Identity Theft Rules,” 16 CFR Part 681, and its rules governing “Disposal of Consumer Report Information and Records,” 16 CFR Part 682. *See* 15 U.S.C. 1681m, 1681w.

⁵ *See* Dodd-Frank Act, at section 1029 (a), (c).

On December 21, 2011, the CFPB issued its interim final FCRA rule, including the prescreen opt-out provisions (subpart F) of CFPB's Regulation V.⁶ Contemporaneous with that issuance, the CFPB and FTC had each submitted to OMB, and received its approval for, the agencies' respective burden estimates reflecting their overlapping enforcement jurisdiction, with the FTC supplementing its estimates for the enforcement authority exclusive to it regarding the class of motor vehicle dealers noted above. The discussion in the Burden Statement below, following preliminary background information, continues that analytical framework, as appropriately updated or otherwise refined for instant purposes.

Background:

Section 615(d) of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. 1681m(d)(1), requires that any person who uses a consumer report in order to make an unsolicited firm offer of credit or insurance to the consumer, shall provide with each written solicitation a clear and conspicuous statement that:

(A) information contained in the consumer's consumer report was used in connection with the transaction; (B) the consumer received the offer of credit or insurance because the consumer satisfied the criteria for credit worthiness or insurability under which the consumer was selected for the offer; (C) if applicable, the credit or insurance may not be extended if, after the consumer responds to the offer, the consumer does not meet the criteria used to select the consumer for the offer or any applicable criteria bearing on credit worthiness or insurability or does not furnish any

⁶ 76 FR 79308 (Dec. 21, 2011). Subpart F of the interim final rule became effective on December 30, 2011, and is

required collateral; (D) the consumer has a right to prohibit information contained in the consumer's file with any consumer reporting agency from being used in connection with any credit or insurance transaction that is not initiated by the consumer; and (E) the consumer may exercise the right referred to in subparagraph (D) by notifying a notification system established under section 604(e) [of the FCRA].

Section 615(d)(1) of the FCRA [15 U.S.C. 1681m(d)(1)].

Section 615(d) of the FCRA requires further that the disclosure statement “be presented in such format and in such type size and manner as to be simple and easy to understand, as established by the [CFPB], by rule, in consultation with the [FTC], Federal banking agencies and the National Credit Union Administration.”

Section 642.3 of the FTC Rule⁷ and section 1022.54⁸ of the CFPB Rule implement this requirement by establishing a “layered” notice approach that requires a short, simple, and easy-to-understand statement of consumers’ opt-out rights on the first page of the prescreened solicitation, along with a longer statement containing additional details elsewhere in the solicitation. Specifically, the Rule required that a short notice be placed on the front side of the first page of the principal promotional document in the solicitation, or, if provided electronically, on the same page and in close proximity to the principal marketing message. The Rule specifies that the type size be larger than the type size of the principal text on the same page, but in no event smaller than 12-point type, or if provided by electronic means, then reasonable steps shall

codified at 12 CFR 1022.54.

⁷ 16 CFR 642.3.

⁸ 12 CFR 1022.54.

be taken to ensure that the type size is larger than the type size of the principal text on the same page. The Rule further provides that the long notice, that appears elsewhere in the solicitation, be in a type size that is no smaller than the type size of the principal text on the same page, but in no event smaller than 8-point type. The long notice shall begin with a heading in capital letters and underlined, and identifying the long notice as the “PRESCREEN & OPT-OUT NOTICE” in a type style that is distinct from the principal type style used on the same page and be set apart from other text on the page. The Rule also includes model notices in English and Spanish.

Burden Statement:

Under the PRA, 44 U.S.C. 3501-3521, Federal agencies must get OMB approval for each collection of information they conduct or sponsor. “Collection of information” includes agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). The FTC is seeking clearance for its assumed share of the estimated PRA burden regarding the disclosure requirements under the FTC and CFPB Rules.

The currently cleared FTC apportionment of its share of PRA burden⁹ is the following:

Total Number of Respondents: 487

Total Burden Hours: 974

Total Labor Costs: \$243,750

Total Capital/Non-Labor Costs: \$0

These figures were determined as follows:

A. Number of Respondents

FTC staff estimates that between 500 and 750 entities make prescreened solicitations. Staff conservatively assumed the high-end of this range for further apportioning. From the total of 750 respondents, FTC staff assumed a 30% “carve-out”¹⁰ to the FTC for the

⁹ OMB Control No. 3084-0132

¹⁰ For purposes of estimating its motor vehicle dealer furnisher carve-out, the FTC has assumed that 30% of the respondents constitute the number of motor vehicle dealers over which the FTC retains exclusive jurisdiction under

above-noted motor vehicle dealers. This resulted in an estimate of 225 motor vehicle dealers subject to the FTC's jurisdiction. After deducting the latter figure from the total of 750 respondents, that left 525 respondents to divide 50:50 between the agencies. With rounding, the FTC apportioned 262 of those respondents to its burden estimates; adding to that the estimated total of 225 motor vehicle dealers resulted in 487 respondents for the FTC.

B. FTC Share of Burden Hours: 974 hours

Staff assumed that respondents will each spend approximately 2 hours to monitor compliance with the Rule. Thus, 487 respondents for the FTC multiplied by the two hour estimate per respondent resulted in 974 burden hours apportioned to the FTC.

C. FTC Share of Labor Costs: \$243,750

Staff assumed that in-house legal counsel for respondents would handle most of the compliance review, and at an estimated average hourly wage of \$250 per hour.

D. Capital/Non-Labor costs: \$0

Assumption: Capital and other non-labor costs should be minimal, at most, since the Rule has been in effect several years, with covered entities now equipped to provide the required notice.

Based on staff's review of industry data and its experience in this area, we have no information to suggest that these figures are not still valid.

Request for Comment

Interested parties are invited to submit written comments. Comments should refer to "Prescreen Opt-Out Disclosure Rule: FTC File No. P075417" to facilitate the organization of comments. Please note that your comment – including your name and your state – will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at

the Dodd-Frank Act. To derive this 30% estimate, FTC staff divided an estimated number of car dealers -- 55,417 (based on industry data for the number of franchise/new car and independent/used car dealers) by 199,500 (Commission staff's PRA estimate of the number of entities that extend credit to consumers subject to FTC jurisdiction under the FCRA, pre-Dodd-Frank, for the Risk-Based Pricing regulations, as detailed at 75 FR 2724, 2748 n.18 (Jan. 15, 2010)). This came out to 28%. Staff increased this amount to 30% to account for other motor vehicle dealer types (motorbikes, boats, other recreational) also covered within the definition of "motor vehicle dealer" under section 1029(a) of the Dodd-Frank Act.

<http://www.ftc.gov/os/publiccomments.shtm>.

Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential" as provided in Section 6(f) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing matter for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c).¹¹

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted using the following weblink

<https://public.commentworks.com/ftc/prescreenoptoutpra> (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink

<https://public.commentworks.com/ftc/prescreenoptoutpra>.

If this Notice appears at www.regulations.gov/search/index.jsp, you may also file an electronic

¹¹ The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law

comment through that website. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.shtm>.

Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein.

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and

and the public interest. See FTC Rule 4.9(c), 16 CFR 4.9(c).

assumptions used are valid; (3) how to improve the quality, utility, and clarity of the disclosure requirements; and (4) how to minimize the burden of providing the required information to consumers. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

John F. Daly
Acting General Counsel.

[FR Doc. 2013-15089 Filed 06/24/2013 at 8:45 am; Publication Date: 06/25/2013]